

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of)	
)	
Assessment and Collection of Regulatory)	RM-11312
Fees for Fiscal Year 2006)	
)	

To: The Commission

COMMENTS OF APOLLO SUBMARINE CABLE SYSTEM LTD.

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Apollo Submarine Cable System Ltd. (“Apollo”), through its undersigned counsel, hereby submits its comments in response to the Petition for Rulemaking (“the Petition”) filed by VSNL Telecommunications (US) Inc. (“VSNL”).¹ Apollo operates a transatlantic, fiber-optic submarine cable system that connects France and the United Kingdom with the United States.² The Apollo submarine cable system is licensed to operate on a non-common carrier basis.³

I. Summary

Apollo supports the proposals of VSNL to establish a separate regulatory fee category for private submarine cable operators, allocate a share of the operating budget of the International Bureau (“IB”) that is reasonably related to the regulatory burdens associated with private submarine cable operators, and assess such fee on a per license basis.

The regulatory burdens associated with the administration of the cable landing license rules can be identified and an appropriate share of the regulatory costs can be allocated to private

¹ The Commission invited comments on the Petition by a Public Notice, FCC Report No. 2759, released Feb.15, 2006.

² Information concerning the Apollo submarine cable system is available at www.apollo-scs.com.

³ *Cable & Wireless USA, Inc. Application for a License to Land and Operate a Private Fiber-Optic Cable System Between the United States, the United Kingdom, and France*, 16 FCC Rcd 12023 (June 8, 2001); modified by DA 01-1615 (July 9, 2001) (the “Apollo Order”).

submarine cable operators. Recent Commission decisions indicate that regulatory burdens have decreased significantly due to the increase in competition in international telecommunications markets and that the Commission is able to rely increasingly upon market forces and reduce its regulatory oversight.

The regulatory fees imposed upon international bearer circuits (“IBCs”) appear disproportionate in comparison with the fees imposed by the Commission on other authorization holders. IBC fees distort the market for IBCs at a time when the Commission is attempting to deregulate and allow market forces to work efficiently. A significantly reduced fee for private submarine cable operators would encourage innovation and expansion of capacity.

II. The Proposal To Create A Separate Fee Category For Private Submarine Cable Operators Is Reasonable And Should Be Adopted.

The Petition requests that the Commission amend Section 1.1156 of the rules which imposes an annual regulatory fee on IBCs in an amount per active 64 kilobit (“KB”) circuit or equivalent. The Commission is authorized to assess and collect annual regulatory fees in order to recover the costs of its regulatory activities.⁴ The regulatory fees should be “reasonably related to the benefits provided to the payor of the fee.”⁵

The Commission can identify the costs and benefits that relate to the regulation of private submarine cable operators with sufficient specificity to create a separate regulatory fee category. The Cable Landing License Act grants to the President control over the landing of submarine cables in order to enable the President to secure cable landing rights in foreign countries for U.S. telecommunications carriers, to protect the rights of the United States and its citizens in foreign countries, and to ensure just and reasonable rates and service on the licensed submarine cables:

⁴ Communications Act of 1934, Section 9(a)(1), 47 U.S.C. §159(a)(1).

⁵ 47 U.S.C. §159(b)(1)(A).

The President may withhold or revoke such license when he shall be satisfied after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed.⁶

The President's delegation of this authority to the Commission by Executive Order obligates the Commission use its delegated authority for the same purposes.⁷ The rules adopted by the Commission establish procedures for the grant of cable landing licenses and impose conditions upon cable landing license holders that enable the Commission to carry out the purposes of the Cable Landing License Act.⁸

The authorization of a submarine cable to operate on a non-common carrier basis reflects a determination by the Commission that sufficient capacity and other conditions exist on the route or routes involved that common carrier regulation is not required in order to achieve the regulatory purposes set forth in the Cable Landing License Act.⁹ Thus, the Commission created an alternative regulatory regime for non-common carrier submarine cable operators, as appropriate to the circumstances, and therefore also should adopt a separate regulatory fee category.

In addition, the Commission's rules make clear that a cable landing license does not confer authority upon the holder to handle traffic to or from the United States:

The licensee, or any person or company controlling it, controlled by it, or under direct or indirect common control with it, does not enjoy and shall not acquire any right to handle traffic to or from the United States, its territories or its possessions unless such service is authorized by the Commission pursuant to Section 214 of the Communications Act, as amended.¹⁰

⁶ Act of May 27, 1921 (Submarine Cables), Section 2, 47 U.S.C. §35.

⁷ Executive Order No. 10530 (May 10, 1954).

⁸ 47 C.F.R. §1.767 and 1.768.

⁹ *E.g., Apollo Order*, 16 FCC Rcd 12023 (June 8, 2001) at paras. 6-10.

¹⁰ 47 C.F.R. §1.767 (g)(4).

By requiring a separate authorization for handling traffic, the Commission determined that the regulatory burdens associated the cable landing license are separate and distinct from the regulatory burdens associated with the handling of traffic on submarine cable systems. Therefore, the Commission should create a fee category for private submarine cable landing license holders that is separate from the fee category for Section 214 authorization holders.

III. The Proposal to Reduce The Regulatory Fees Charged To Private Submarine Cable Operators Also Is Reasonable And Should Be Adopted In Order To Encourage Innovation And Capacity Expansion.

The Commission has found that increased competition in international telecommunications services warrants deregulation and greater reliance upon market forces. Regulatory fees on private submarine cable operators should be reduced in order to achieve the benefits of de-regulation, eliminate market distortions and encourage innovation.

A. Increased Competition In International Telecommunications Markets Supports Deregulation And Reliance Upon Market Forces.

In its most recent *Biennial Regulatory Review*, the IB discussed a number of deregulatory actions taken over the past several years based upon findings of increased competition in international telecommunications markets.¹¹ For example, in discussing its open entry policy, the IB stated:

The Commission has sought to foster an increasingly competitive international telecommunications market by adopting policies that promote foreign participation in the U.S.-international market. To make the provision of U.S.-international services more competitive, the Commission has liberalized and streamlined its market access policies in response to the U.S. commitments made pursuant to the WTO Basic Telecommunications Agreement, the commitments of trading partners, and the Commission's improved regulatory framework. For example, the Commission has simplified its own licensing and authorization rules in ways that have facilitated entry into the U.S. market by foreign competitors. In the Foreign Participation Order, the Commission adopted a rebuttable presumption ("open entry standard") in favor of entry by foreign applicants from WTO

¹¹ *Federal Communications Commission 2004 Biennial Regulatory Review, International Bureau Staff Report*, 20 FCC Rcd 343 (Jan. 5, 2005) ("IB 2004 Biennial Review").

Members applying for section 214 authorization, submarine cable landing licenses, and foreign indirect investment in excess of 25 percent in Title III common carrier, aeronautical fixed and route radio licenses pursuant to section 310(b)(4).¹²

Similarly, when the IB decided to deregulate its international settlements policy (“ISP”), the IB reasoned that increased competition in international markets lessened the need for regulation and increased the need for flexibility to respond to market conditions:

As the U.S.-international market and foreign markets have become more competitive, the Commission has become progressively more deregulatory in its application of the ISP. As the Commission recognized in the 1999 ISP Reform proceeding, the restrictions of the ISP that are intended to protect the public interest may in reality hinder the ability of U.S. carriers to negotiate more cost-based settlement rates and efficient terms in their agreements with foreign carriers. Indeed, because the ISP focuses on creating a unified bargaining position for U.S. carriers, it denies U.S. carriers the ability to respond quickly to changing conditions in the global telecommunications marketplace by preventing carriers from negotiating responsive and flexible agreements with individualized rates and terms.¹³

Thus, the *IB 2004 Biennial Review* recognizes that increased competition in the provision of international telecommunications services enables the Commission to deregulate and rely instead upon market forces as it has done in the *ISP Reform Order* and the *Foreign Participation Order*.¹⁴ The IB report and decisions are consistent with the VSNL proposal to reduce the regulatory fees paid by private submarine cable operators to reflect decreased regulatory burdens and to avoid distortion of competitive markets.

On the other hand, the imposition of increased reporting requirements on private carriers would not be consistent with deregulation and reliance upon competitive markets.¹⁵ While it is tempting to believe that expanded reporting requirements would increase the total number of reported IBCs and thereby enable the Commission to lower the regulatory fee per IBC, the

¹² *IB 2004 Biennial Review*, 20 FCC Rcd 343 at para. 23 (citation omitted).

¹³ *International Settlements Policy Reform*, 32 CR 173, 19 FCC Rcd 5709 (March 30, 2004) (“*ISP Reform Order*”) at para. 13 (citation omitted).

¹⁴ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket 97-142, *Report and Order and Order on Reconsideration*, 12 FCC Rcd 23 891 (1997), *recon.* 15 FCC Rcd 18158 (2000).

¹⁵ E.g., *NPRM on Reporting Requirements for U.S. Providers of International Telecommunications Service*, FCC 04-70, 19 FCC Rcd 6460 (April 12, 2004) (“*ITS Reporting NPRM*”) at para. 60.

imposition of expanded reporting requirements would be a step back from the substantial progress toward deregulation and reliance upon market forces reflected in the *IB 2004 Biennial Review*, the *ISP Reform Order* and the *Foreign Participation Order*.

The more vibrant and responsive the market for international telecommunications services becomes, the more costly and burdensome it would be to attempt to monitor every 64 KB circuit. Thus, VSNL's proposal to adopt a fee per cable landing license, rather than per 64 KB IBC, is consistent with the Commission's recent decisions and should be adopted, rather than adopting the alternative proposal of expanded reporting suggested in the *ITS Reporting NPRM*.

B. The IBC Regulatory Fees Appear Disproportionate And Likely To Distort The Market.

The regulatory fee imposed on IBCs can amount to "50 percent of the overall price paid by the customer of the higher-capacity products," according to VSNL.¹⁶ This fee appears disproportionate when compared to the fees imposed upon other authorization holders.

For example, the Competition Bureau in 2005 charged interstate telecommunications service providers a fee of \$0.00243 per \$1.00 of revenue.¹⁷ Equating revenue with price, the ITS fee amounts to about a quarter of a percent of the price. Similarly, the Wireless Telecommunications Bureau 2005 annual regulatory fee of \$0.22 per handset¹⁸ appears to amount to about one tenth of a percent of the price of wireless service.¹⁹

The Media Bureau regulatory fees also appear to amount to a very small percentage of the price of the regulated services. The 2005 fee for cable television operators of \$0.72 per

¹⁶ Petition at 3.

¹⁷ "What You Owe – Interstate Telecommunications Service Providers (ITSP) for FY 2005," Fact Sheet released July, 2005.

¹⁸ "What you owe – Commercial Wireless Services for FY 2005," Fact Sheet released July, 2005.

¹⁹ Wireless industry figures indicate that a conservative estimate of revenue per subscriber would be \$50/month or \$600/year. Further, we assume the subscriber has a family share plan with three handsets. Under these assumptions, the fee amounts to 0.66/600 or \$0.0011 per \$1.00 of the price of wireless service.

subscriber²⁰ appears to amount to about one tenth of a percent of the price of cable television service.²¹ While viewers do not pay for broadcast services, using advertising revenue as a proxy for price, the annual regulatory fee for television station licensees appears to amount to about a tenth of a percent of the “price” of television service.²²

Consistent with the regulatory fee structure for other services, the regulatory fee imposed upon private submarine cable operators should be low enough that it would have only a *de minimus* impact on the price of submarine cable service. This would ensure that market forces are allowed to operate and thereby spur innovation and increased capacity utilization.

²⁰ “What you owe – Cable Television Systems for FY 2005,” Fact Sheet released July, 2005.

²¹ An industry press release cites average revenue per cable television subscriber in 2004 of \$42.91/month or \$514.92/year (<http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&ID=636294&highlight>). Using that figure, the 2005 regulatory fee amounts to 0.72/514.92 or \$0.001398 per \$1.00 of the price paid for cable television service.

²² For example, the fee is \$32,025 for a mid-market, VHF television station. “What you owe – Media Service Licensees for FY 2005,” Fact Sheet released July, 2005. According to a television industry study, the average revenue of all US television stations in 2002 was \$24 million, conservative for a mid-market VHF station. (http://www.stateofthenewsmedia.org/narrative_localtv_economics.asp?cat=4&media=6) Using these figures, the fee amounts to 32,025/24 million or \$0.001334 per \$1.00 of the proxy price.

IV. Conclusion

Wherefore, for the foregoing reasons, Apollo Submarine Cable System Ltd. supports the Petition of VSNL and requests that the Commission promptly adopt the VSNL proposals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Roberta A. Muscarella, an Administrative Assistant in the law offices of Thelen Ried & Priest LLP, hereby certify that a true and correct copy of the foregoing Comments of Apollo Submarine Cable System Ltd. was delivered via email this 17th day of March, 2006 to:

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